

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-59-C - ORDER NO. 2004-421  
SEPTEMBER 3, 2004

IN RE: Application of Nexus Communications, Inc.	)	ORDER GRANTING
for a Certificate of Public Convenience and	)	CERTIFICATE TO
Necessity to Provide Facilities-Based and	)	PROVIDE LOCAL
Resold Local Exchange	)	EXCHANGE
Telecommunications Services within the	)	TELECOMMUNICATIONS
State of South Carolina and Requesting	)	SERVICES
Flexible Regulation of its Local Exchange	)	
Services.	)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Nexus Communications, Inc. (“Nexus” or the “Applicant” or the “Company”) for authority to provide local exchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2003) and the Rules and Regulations of the Commission.

By letter, the Commission’s Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicant complied with this instruction and

provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”).

Counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would not seek authority in any rural local exchange (“LEC”) service areas of South Carolina except as provided in the Stipulation and that Nexus would not provide any local service to any customer located in a rural incumbent's service area, unless and until Nexus provided written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. Nexus also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Nexus agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Nexus provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on June 2, 2004, at 2:30 p.m. in the Commission's Hearing Room. The Honorable Mignon Clyburn, Chairman, presided. Nexus was represented by Bonnie Shealy, Esquire. Steven Fenker, Vice President of Nexus, appeared and testified on behalf of the Company. Jocelyn Boyd, Staff Counsel, represented the Commission Staff.

Mr. Fenker presented testimony to demonstrate the Company's financial, managerial, and technical ability to provide the telecommunications services for which

authority is sought in South Carolina. Mr. Fenker also presented testimony regarding his background and experience in business and telecommunications as well as that of the other executives of Nexus. Mr. Fenker's testimony and exhibits and the exhibits filed with the Company's Application evidence that the management team of Nexus has extensive experience in the telecommunications industry and that the Company is on sound financial footing to begin operations in South Carolina.

Nexus was incorporated on September 11, 2000, under the laws of the State of Ohio. Nexus proposes to offer competitive local exchange telecommunications services throughout the BellSouth service areas. Nexus plans to offer a variety of competitive local exchange services including basic service, custom-calling features, and intraLATA toll services utilizing incumbent local exchange carrier unbundled network elements. According to Mr. Fenker, Nexus does not intend to construct any facilities in South Carolina.

With regard to technical qualifications and aspects of Nexus' business, Mr. Fenker testified that Nexus will be relying on the technical network capabilities of its underlying carrier(s) for all network and transport facilities in the provision of access and egress for the local exchange services offered by Nexus.

Mr. Fenker also described the billing and customer services of Nexus. Nexus will bill its customers directly. Customer inquiries are handled by Nexus' customer service department. Customers may reach Nexus' customer service department via a toll free telephone number or via facsimile. The contact numbers for Nexus' customer service department and the address are listed on the bills.

Nexus is currently authorized to provide services in Illinois, Indiana, Kentucky, Ohio, Michigan, Missouri, Wisconsin, North Carolina, and Florida. Nexus has applications for authority pending in 8 other states. Mr. Fenker testified that Nexus has never had authority revoked in any state and that Nexus has not been subject to any federal or state investigation regarding the provision of telecommunications services. The record also reveals that the Company agrees to abide by and comply with the Commission's rules, regulations, and Orders.

Mr. Fenker also explained Nexus' request for waivers of certain Commission rules and regulations. Specifically, Nexus has requested that it be allowed to maintain its books and records under Generally Accepted Accounting Principles ("GAAP") as opposed to the Uniform System of Accounting ("USOA"). Additionally, the Company has requested waivers of the requirements that it publish and distribute a local telephone directory under Regulation 103-631 and that it maintain its books and records within the State of South Carolina as required by Regulation 103-610. Nexus states that it will contract with the ILECs in the areas where Nexus will serve to include the names and phone numbers of Nexus' customers in the ILECs' directories. Further, Nexus asserts that it will keep its books and records at its headquarters in Columbus, Ohio and will make its books and records available for inspection by the staff as requested.

Finally, Mr. Fenker offered that approval of Nexus' Application would be in the public interest in South Carolina by allowing South Carolina consumers to obtain competitive services and rates. Mr. Fenker stated that customers would benefit from Nexus' industry experience and innovative service offerings and billings options. Further,

Mr. Fenker opined that an increase in the traffic generated through the provision of the Company's proposed intrastate services over existing facilities will help improve the efficiency of those facilities and reduce the underlying carriers' costs in provisioning such services.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. Nexus is organized as a corporation under the laws of the State of Ohio with its headquarters in Columbus, Ohio and is registered as a foreign corporation, in good standing, with the Office of the South Carolina Secretary of State.

2. Nexus is a provider of local exchange telecommunications services and wishes to provide its services in South Carolina.

3. Nexus has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 2003).

4. The Commission finds that Nexus' "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2003).

5. The Commission finds that Nexus will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 2003).

6. The Commission finds that Nexus will provide services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2) (Supp. 2003).

7. The Commission finds that the provision of local exchange service by Nexus “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2003).

8. We find that the issuance of the authority requested by Nexus will serve the public interest in South Carolina and is in the best interests of the citizens of the State of South Carolina.

9. We find that the waivers as requested by Nexus that it (1) be allowed to maintain its books and records according to GAAP rather than the USOA, (2) not be required to publish and distribute a local telephone directory, and (3) be allowed to maintain its books and records at its headquarters in Columbus, Ohio rather than within South Carolina should be granted. We find that compliance with these requirements by the Commission would present unusual difficulty for Nexus. Further, we find that the waiver of these requirements will not create any hardship to the public or adversely affect the public interest.

#### **CONCLUSIONS OF LAW**

1. The Commission concludes that Nexus possesses the managerial, technical, and financial resources to provide the competitive local exchange telecommunications services as described in its Application.

2. The Commission concludes that Nexus' "provision of service will not adversely impact the availability of affordable local exchange service."

3. The Commission concludes that Nexus will participate in the support of universally available telephone service at affordable rates to the extent that all CLECs may be required to do so by the Commission.

4. The Commission concludes that Nexus will provide services that will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange service by Nexus will not otherwise adversely impact the public interest.

6. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Nexus to provide competitive intrastate local exchange services only to customers located in the non-rural areas of the state. The terms of the Stipulation between Nexus and SCTC are approved, and adopted as a part of this Order. Therefore, any proposal to provide local telecommunications service to rural service areas is subject to the terms of the Stipulation.

7. The Commission concludes Nexus' local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for Nexus' competitive local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved

by the Commission. Further, Nexus' local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to initiate an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

8. We conclude that the waivers as requested by Nexus that it (1) be allowed to maintain its books and records according to GAAP rather than the USOA, (2) not be required to publish and distribute a local telephone directory, and (3) be allowed to maintain its books and records at its headquarters in Columbus, Ohio rather than within South Carolina will not adversely impact the public interest in South Carolina, and therefore we conclude that the requested waivers should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to Nexus to provide competitive local exchange telecommunications services, via resale or on a facilities-based basis.

2. The terms of the Stipulation between Nexus and the SCTC are approved and adopted as a part of this Order. The Stipulation is attached as Order Exhibit 1. Any proposal to provide competitive local exchange telecommunications services to rural service areas is subject to the terms of this Stipulation.

3. Nexus shall file, prior to offering local exchange services in South Carolina, its final local service tariff with the Commission. Nexus' tariff shall conform and comport with South Carolina law in all matters. Nexus' local telecommunications



services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for Nexus' competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Nexus' local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

4. Nexus shall be required to comply with Title 23, Chapter 47, South Carolina Code of Laws Ann. which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Nexus to contact the appropriate authorities regarding 911 service in the counties and cities where Nexus will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State

911 Office at the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services within South Carolina, Nexus shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

5. The FCC in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 2, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. Nexus must comply with the applicable mandates. Complete information on compliance with this FCC and Commission requirement, may be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>.

6 Nexus is required to file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts report will necessitate the filing of intrastate information. Therefore, Nexus shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements for filing an annual report and a gross receipts report. The form Nexus shall use to file its annual financial information with the Commission may be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>. The form is entitled "Annual Report for Competitive Local Exchange Carriers" and shall be filed with the Commission by April 1<sup>st</sup> of each year. Commission gross receipts forms are due to be filed with the Commission no later than August 31<sup>st</sup> of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>.

7. Additionally, Nexus shall file with the Commission a quarterly report entitled "CLEC Service Quality Quarterly Report." The proper form for this report is found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>.

8. Nexus shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Nexus shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as

emergencies which occur during non-office hours. Nexus shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” form which may be located at the Commission’s website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp) to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

9. Nexus shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

10. Nexus is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. For good cause shown, Nexus is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Principles rather than the Uniform System of Accounts method.

12. For good cause shown, Nexus is granted a waiver of the requirements that the Company publish and distribute a local directory as required by 26 S.C. Code Ann. Reg. 103-631. However, as a condition to receiving a waiver of this requirement to publish local directories, Nexus shall contact the incumbent ILECs and ensure that the Company’s customers are included in the ILECs’ applicable directories.

13. For good cause shown, Nexus is granted a waiver of the requirement that it maintain its books and records in South Carolina as required under 26 S.C. Ann. Regs. 103-610. However, as a condition of being granted a waiver of the requirement to maintain corporate books and records within the State of South Carolina, Nexus is authorized to maintain its books and records at its corporate headquarters in Columbus, Ohio, and Nexus shall make such books and records available, at the Company's expense, to the Commission staff or employees upon request.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
G. O'Neal Hamilton, Vice-Chairman

(SEAL)